Supreme Court, U.S.
FILED
OCT 24 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1179

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ARNOLD SONDEREGGER,

Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;
NORMAN W. SINGER; and
ROBERT A. MUELLER,

Respondents.

---

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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# PETITION FOR CERTIORARI

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ARNOLD SONDEREGGER, IN PROPRIA PERSONA
628 S. ARDMORE, APT. 22, LOS ANGELES,
CALIFORNIA 90005

## QUESTIONS PRESENTED

1. Was it an abuse of discretion for the federal judges in this case not to allow the filing of the Petitioner's Third amended complaiht in that it pleaded the misrepresnetations, and the failure to tell of the risks involved in a margin account with interest rated 18 to 21.75 per cent, in a declining market, and with double-loss from a margin call, and the margin call was never explained until it happened and then, the stock broker, NORMAN W. SINGER claimed he had information that the stock would turn around and hit bottom and not to sell all on each of three margin calls.

And further, the Federal judges in this case were to take judicial notice of the Arrignton v. Dean Witter Reynolds ninth circuit case, which stated failure

that a cause of action upon which r lief can be granted for failure to disclose the risks in a declining market and also, for representation.

Therefore, was it an abuse of discretion for not granting leave to the Petitoner to file the Third Amended complaint with a demand for trial by jury?

2. Was it an abuse of discretion not to set aside the the memorandum of decision with the Rule 60 of the F.R.C.P., because the judgment was for a penalty t prevent discovery, and should have noted the Petitioner uncovered frauds in addition to those already presented in the IBM transfer from MERRILL LYNCH, PIERECE, FENNER & SMITH INC. OF Glendale branch, to E. F. HUTTON & COMPANY INC. at Universal City branch, because the 115 IBM

(continued question 2)
DELIVERED was CHANGED when being RECEIVED from 115, to 215 and made a false security of "buying Power" printed on monthly statements for 6½ months?

And therefore, because this IBM fraud, which was concealed for that long became intentional fraud, and therefore, not to realize the causes of action stated in the Third Amended Complaint was a penalty and not for discovery as perported, and was thus void for want of juridciton by rule 60, and therefore, the question is was this an abuse of discretion by the U.S. DISTRCIT COURT JUDGE, AND THE JUDGES OF THE U.S. NINTH CIRCUIT?

3. Was it an abuse of discretion for a Magistrate who is not an

article III judge to rule on the Petitioner's motion for reducing the number of interrogatories in Chambers, which did not allow the Petitioner to present the case of Stoval, that interrogatories that stated all occurrences, and any occurences was too broad and all-inclusive to have to be answered and upon which the Dist. Court Judge ruled on, the without any court reporter or transcript in her memorandum of decision?

4. Was it an abuse of district court Judge for the central district of California, and the U.S. COURT OF APPEALS TO ALLOW the Third Amended Complaint not to filed with any evidentiary hearing that there were no genuine issue upon which relief could be granted?

5. Whether the case should be reversed when the Petitoner's due process of law was denied all throughout the entire case by not filing his amended complaints by not filing many of his briefs, and not having hearing on any evidence?

6. When the Cases mentioned in the U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT such as Wyle vs R.J. REYONLDS INDS. INC. vs. in which discovery was considered not forth coming, was to get dicovery, while the petitioner was the opposite of continuing to make discovery and should not have been penalized for making doscovery, and therefore, was this case really for the Petitioner and not for the Respondents, and therefore, was it an abuse of discretion to use this case against the Petitoner?

7. Was it an abuse of discretion to use the case of ANDERSON v AIR WEST, INC. in the Ninth Circuit memeorandum of decision, when this case talked about a long delayed service of summons, and in the Petitioner's case the summons was very prompty served, and therefor e, was this an abuse of discretion to use a case that did not follow orders when the Petitoner was seeking to get discovery and did make discovery and yet was told it was not fast enough. Is that an abuse of discretion?

INEX OF PETITION

MEMORANDUM OF DECISION AND THE

OTHER DECISIONS OF THE U.S. COURT OF

APPEALS FOR THE NINTH CIRCUIT IN APPENDIX
numbered 1 through 16.

pages.

Juridsdiction Page B

QUESTIONS PRESENTED a,b,c,d,e,f,

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Statement of the case i, and on.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. ....

ARNOLD SONDEREGGER, Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;
NORMAN W. SINGER; and
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---

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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The Petitioner respectfully prays that a writ of certiorari issue to review the MEMORANDUM of decision by the United States Court of Appeals for the Ninth Circuit which was filed July 26, 1985 affirming MEMORANDUM of decision against the Petitioner. Page A.

## JURISDICTION

The Memorandum of decision of the United States Court of Appeals for the Ninth Circuit was filed July 26, 1985.

The Petition for writ of certiorari was mailed by express October 24, 1985.

The jurisdiction of this Court is invoked under 28 U.S. . section 1254(1).

Further Entries on the Court of Appeals for the Ninth Circuit:

July 31, 1985. As of July 26, 1985 ordered Memorandum of decision filed and entered.

July 31. Filed and entered Memorandum of decision.

Aug. 9, 1985. Filed as of Aug. 7, 1985 Applicant's (pro per) motion for an order for a 28 day extention of time to file Petition for Rehearing.

Aug. 14, 1985. Received applicant's

Sept. 21, 1985. Filed Order(CHOY,SNEED,& PREGERSON)Applicant's motion to file Supplemental Brief is moot. Applicant's motion for extention of time to file a rehearing Petition is denied.

Sept. 12, 1985. Filed as of Aug. 30, Applicant's notice of motion for an order for Reconsider leave o file Supplemental Brief (motion for reconsideration of Aug. 21, 1985 Order)

Sept. 21, 1985 Mandate Issued.

Sept. 13, 1985. Received, as of Sept. 11, 1985, applicante's (pro per) "Second Section for Rehearing Petition. Returned to applicant per order of October 13, 1985.

Sept. 13, 1985. Filed Order (CHOY, SNEED and PREGERSON) denying applicant's motions for reconsideration. Page C.

## STATEMENT OF THE CASE

In the memorandum of decision and order of the United States District Court Judge PAMELA ANNY RYMER for the Central District of California in the Discussion page 5, it cited Wylie v. R.J. Reynolds Indus., In., 709 F. 2d 515 (9th Cir 1983) and quoted as follows on page 5,

> "The district Court's use of sanctions under Rule 37 is limited by two factors. Id. at 591. The sanctions must be "just," and, secondly, they must be specifically related to the particular claim at issue in the discovery order. Id. Sanctions interfering with a litigant's claim may violate due process when imposed only for punishment for violations of court orders rather than to redress a

discovery violation which threatens the rightful decision of the case."

The Respondents only made a general denial and general defenses, and served 62 interrogatories with 105 sub-parts, and objected to the 12 interrogatories served on them on the grounds of being private information and so forth. And took the four hour deposition, under oath, which consisted of many irrelevant personal questions, that were also repeated in the Respondents' interrogatories.

However, no questions in the deposition asked about the material omissions and concealed frauds, from which the Petitioner was mislead, and upon finding the error in the lodged (new) related-back Second amended complaint with demand for a jury trial

and with 15 exhibits, and the lodged related-back THIRD AMENDED COMPLAINT with a demand for a jury trial and with 15 exhibits.

These, preceded the memorandum of decision to dismiss with prejudice. The lodging of the related-back THIRD AMENDED COMPLAINT with a demand for trial was lodged June 5, 1984, along with the motion for leave to file, that was filed June 5, 1984. The hearing was set for July 2, 1984, but no time for arguments for it was given.

The Civil Minutes - General of 7-2-84 were as follows:

> "Proceedings: Defendant's motion to dismiss;
>
> Plaintiff's motion for leave to file a related-back 3rd amnended complaint by FRCP 15(c).

Court issues a tentative ruling.

Plaintiff argues.

Court orders plaintiff to answer the interrogatories on or before 7/9/84 as stated in the tentative ruling or the action will be dismissed.

"Court denies plaintiff's motion for leave to file a related back 3rd amended complaint."

In FOMAN vs. DAVIS, 83 SUPREME COURT, 227, 371 U.S. 178 (1962),

"9. Federal Civil Procedure

"Outright refusal of federal district court to grant plaintiff leave to amend complaint without any justifying reason appearing for denial is not exercise of discretion by court but is abuse of discretion and inconsistent with

spirit of Federal Rules of Civil Procedure. Fed. Rules Civ. Proc. rule 15(a), 28 U.S.C.A."

The original complaint was filed on 3/9/83 and the FIRST AMENDED COMPLAINT was filed 3/16-83 with proof of service of amended summons and FIRST AMENDED COMPLAINT on E. F. HUTTON & COMPANY, INC. on 3-22-83, and with proof of service of amended summons and FIRST AMENDED COMPLAINT with demand for a jury trial and with 10 exhibits onto NORMAN W. SINGER, and ROBERT A. MUELLER on 3/29/83.

On 5/5/83 filed Defendant's Answer to Complaint. Thus, the Petitioner did not need leave of court to file the First Amended Complaint, because it was filed and served before an answer was made.

The caption reads,

"Civil actin case no. 83-1414-R.G.

First Amended Complaint for Fraud under the Securities & Exchange Act of 1934, Breach of Fiduciary Duty, Fraud and Deceit, Breach of Oral Contract and Written Contracts: Demand for Jury Trial."

On page 1 of First Amended Complaint it reads,

Par.1 "Plaintiff alleges, upon information and belief that in connection with the purchase and sale of securities, E. F. HUTTON & COMPANY, INC., whose transactions in this case occurred at Universal City branch (hereinafter referred to as "HUTTON") and Norman W. Singer (hereinafter referred to as "SINGER") and Robert A. Mueller (hereinafter referred to as "MUELLER") engaged in acts,

practices and a course of business which would and did operate a fraud and deceit upon the plaintiff and made untrue statements of material fact and omitted to state material facts, all of a part of a device, scheme and device to defraud plaintiff by SINGER refusing to follow the demands of ARNOLD SONDEREGGER (hereinafter referred to as "SONDEREGGER") made on 12-23-80.

SUBJECT INDEX

Sanctions may violate due process
In the U.S. DISTRICT COURT
Sonderegger lodge (new) SECOND
AMENDED COMPLAINT, that was taken
off calendar by the Judge. This
complaint corrected an error of
Plaintiff based on the material
omissions of the Defendants.

On June 5, 1984 Plaintiff lodge a related-back Third Amended Complaint with demand for trial by jury and had 15 exhibits and consisted of 43 pages

E. F. HUTTON & COMPANY, INC. added 10o0 IBM shares to the 115 shares (among other shares of oil stocks etc.) to the delivery from MERRILL LYNCH, PIERC, FENNER & SMINT INC. FOR 6-1/4 MONTHS and recorded false buying power all the time, which was relied upon to plaintiff's detriment. The continued concealed fraud, thus, buecame intentional fraud.

MAGISTRATE'S ruling in chambers without any parties deprived Petitioner of the right to present a case law on subject. Ruling in chambers on a protective order

motion lacked due process.
The case law of too broad and too
all inclusive interrogatories need
not be answered was presented at
hearing on interrogatories
but was not recorded in ruling,
thus, an amended ruling was made
leaving out the wording, "each and
every without objection." The U.S.
DISTRICT JUDGE failed to take judi-
cial notice of the amended ruling in
her decision quoting Magistrate with-
out reviewing the ruling.

Petitioner was trying to accom-
plish, discovery and made progress
at all times in doing so, and thus,
all the cases by inversion as to
purpose are for the Petitioner and
leaves the Respondents without any
case law in their favor.

New Supreme Court Law case gives right to arbitrate separately the pendent sate law claims.

Petitioner makes declaration to make a motion in the lower court to have pendent claims sent to Arbitration.

Stock brokers of E.F. HUTTON & COMPANY, INC. deceived the main company, as well as the Petitioner, therefore, Petitioner waives the punitive damages of the case.

Supreme Court Case in regards to civil right for a jury trial by the 7th Amendment of U.S. Consti.

Supreme Court case says rule 37 should not deprive part of constitutional right of due process.

No hearings on evidence was

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ever had and the merits were never heard.

U.S. CT. of Appeals for the 9th Cir. says,

> "Rule 60(b) is clearly designed to permit a desirable objective: that cases may be decided on the merits."

1985 case of Arizona on loss causation.
That considers the entire functioning of the scheme to defraud.

More cases on loss-causation.

Cases that show Petitioner had a meritorious case.

Petitioner showed there were good causes of action upon which relief could be granted.

Conclusion:

CONSTITUTIONAL PROVISIONS

On page 5, line 6,

"...for the purpose of preventing discovery, and thus, was penalty, which was a violation of due process."

In violation of 5th, 14th and 7th amendments of the United States Constition.

In Societe Internationale, Etc. v. Rogers

78 S. CT. 1087, 1094,

"... provisions of the Fifth Amendment that no person shall be deprived without due process of law..."

By rule 60 memorandum of decision void for want of jurisdiction, because her decision was for a penalty only, and violated the 5th,

14th and 7th amendments of the United States Constitution.

The Constitutional Texts are as follows:

Amendment 5, (U.S. CONSTITUTION)

> "... nor be deprived of ... or property, without due process of law."

Amendment 7, (U.S. CONSTITUTION - Civil Trials)

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

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Amendment 14th -

"...nor shall any State deprive any person ..., of property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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## THE ARGUMENT

In the Memorandum of decision of the United States District Court for the Central District of California, the Honorable Judge PAMELA ANN RYMER cited Wylie v. R. J. Reynolds Inds., Inc. 709 F. 2d 515 (9th Cir. 1983) and quoted on page 5,

> "The district Court's use of sanctions under Rule 37 is limited by two factors. Id. at 591. The sanctions must be "just," and, secondly, they must be specifically related to the particular claim at issue in the discovery order. Id. Sanctions interfering with a litigant's claim may violate due process when imposed only for punishment for violations of court orders rather than to redress a

discovery violation which threatens the rightful decision of the case."

Quoting from the docket sheet No. 73, on 4-16-84:

> " Plaintiff lodged proposed 2nd Amended Complaint with demand for jury trial,"

and also

> "Filed plaintiff's 4-16-84 notice of motion and motion for leave to file a (new) related-back Second Amended complaint returnable 5-7-84 at 10 A.M."

This was taken off calendar by the Judge.

In this proposed Third Amended Complaint the Petitioner corrected an error that was caused by Respondents in their monthly statements by omitting to disclose the material facts in regard to

the status of total net worth of margin accounts delivered by MERRILL LYNCH at Glendale branch to HUTTON branch at Universal City.

Also, this omitting of material facts was also, done by the monthly statements of MERRILL LYNCH, PIERCE, FENNER & SMITH INC. at the Glendale branch when DELIVERING the Petitioner's account from MERRILL LYNCH to HUTTON at Universal City branch.

On June 5, 1984 the plaintiff and now Petitioner lodge a related-back THIRD AMENDED COMPLAINT with demand for trial by jury of 43 pages and 15 exhibits.

This complaint also, corrected the error that the plaintiff made in the filed FIRST AMENDED COMPLAINT with demand for trial by jury and with 10 exhibits.

The error resulted from the omission and misleading statements by both broker-

age firms in their monthly statements. ARNOLD SONDEREGGER had his account at the MERRILL LYNCH, PIERCE, FENNER & SMITH INC. brokerage at Glendale, California ("MERRILL LYNCH") which DELIVERED plaintiff's other account to E. F. HUTTON & COMPANY, INC. at Universal City ("HUTTON") who RECEIVED the account of the plaintiff to add to his account at HUTTON.

The monthly statments from both firms omitted to state the net worth of plaintiff's account being transferred, and were misleading, in that the CREDIT and DEBITS between brokerage firms is exactly opposite to that of firm and client. Thus, their accounting was misleading to Plaintiff, who did not understand any accounting, and upon finding the error immediately corrected it.

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This was suppressing the facts omitted while bound to disclose them or while giving out other information which was likely to mislead plaintiff.

Also, in the lodged related-back THIRD AMENDED COMPLAINT with demand for trial by jury with 43 pages and 15 exhibits on June 5, 1984, it explained the newly found deceit, and misrepresentation in regards to the following:

On June 5, 1984 ARNOLD SONDEREGGER lodge the related-back THIRD AMENDED COMPLAINT with demand for trial by jury with 43 pages and 15 exhibits, and on pages 15, 16 & 17 explained his new discovery of how the account executive for HUTTON at Universal City branch had changed the figures sent by MERRILL LYNCH.

NORMAN W. SINGER, the account executive had induced the plaintiff to send

his stock account from MERRILL LYNCH to HUTTON. After MERRILL LYNCH delivered the stocks, including 115 IBM, and HUTTON had received the stocks including IBM, HUTTON on top on the monthly statement put rec'd 115 IBM, and on the bottom of the page marked it 215 IBM, and thus added $5,000.00 more market value that was deducted from the margin for 6-1/2 months and each month figured a false buying power figure on each monthly statement, and even, paid a dividend on the unowned 100 shares of IBM. And on the first margin call the error was found and corrected after all the time SINGER had plaintiff relying on the buying power that SINGER proclaimed.

And even, after each of the three margin calls, SINGER induced the plaintiff to only sell what was required and

claimed the stocks would turn around and had hit bottom, because he had research information that he did not have time to explain to me in facts.

Thus, this concealed fraud, which continued for 6-1/2 months became intentional fraud.

This newly discovered fraud by plaintiff was in in the filed FIRST AMENDED COMPLAINT, because accounts had to explain how it happened.

Thus, not to grant leave to file the related-back THIRD AMENDED COMPLAINT with demand for trial by jury was for the purpose of preventing discovery, and thus, was a penalty, which was a violation of due process.

At the hearing of July 2, 1984, the plaintiff asked for an extention of time to answer interrogatories, and was

granted seven days extention of time, in which to answer 11 personal questions involving detailed employment questions, and questions that had already been answered in the plaintiff's deposition.

In the ex-parte application for an order for 30 days extention of time to answer interrogatories on the merits of the case, the Judge denied giving any further extention of time.

However, the plaintiff (petitioner) continued answering interrogatories and asked for a RECONSIDERATION, which was denied.

Still the plaintiff (petitioner) continued answering interrogatories on the merits and made a motion on FRCP Rule 60 to set aside the order of dismissal with prejudice, because it was a penalty to prevent discovery and cited

the motion for a protective order made by the plaintifff (petitioner) that was quoted wrongly in the decision, because of failure to take judicial notice of the Magistrate's amended ruling. To start with, the Magistate denied the motion for protective order in Chambers, which prevented the Petitioner (plaintiff) from presenting Stoval case that said, interrogatories that were too-broad and all-inclusive need not be answered.

Then, at the hearing on the interrogatories, (petitioner) read the following:

> "Defendant's objections to interrogatories which required defendant to state all "all" facts in his possession relative to each occurrence would be sustained on ground that interrogatories were

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too general and all-inclusive to be answered."

At that time, the U.S. MAGISTRATE VENETTA S. TASSOPULOS interrupted, so the plaintiff could not give the cite.

However, after the hearing, the plaintiff asked why he was not allowed to give the cite, which was,

> From Wright and Miller, Federal Practice, page 548, Stovall v. Gulf & So. Am S.C. Co., Tex. 1961, 30 F.R.D. 152."

So, the Magistrate said, "I will amend that part of my ruling or leave out each and every without objection," and this is her ruling, that was misconstrued by both The District Court and the Ninth Circuit appellate court.

> "Proceedings in chambers minute order.

"On Plaintiff's oral request re clarification as to due date of answers to interrogatories, the Court rule that the answers must be served on Defendants on or before March 12, 1984."

At all times Petitioner was trying to make discovery and not trying to get out of discovery, but insisted upon making discovery and the prevention of which was a penalty in violation of due process of the 5th and 14th amendments of the U.S. Constitution, and also, were in violation of the 7th AMENDMENT to U.S. Constitution, which provides for civil jury trials on the merits.

Thus, all the cases cited in the Judges of the 9th Circuit Court of Appeals memorandum of decision by the Respondents in this whole case are all

advocating making discovery, which in their cases was hidden or the equivalent, exactly opposite of the Petitioner making discovery and uncovering frauds and did not want to be prevented from continuing discovery.

Thus, the Petitioner was trying to accomplish, discovery and made progress at all times in doing so, and thus, all the cases by inversion as to purpose are for the Petitioner and leaves the Respondents without any case law in their favor. In Dean Witter Reynolds, Inc. vs. Byrd S.CT. 4-4-85, No. 83-1708, it gives the right to separately have the state law claims pendent to federal securities law claims be sent to arbitration on request of the one of the parties. (No. 83-1708) from 9 Cir.

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The Petitioner, now makes a declaration under penalty of perjury that he wants his pendent claims to be separated and be sent to arbitration before hearing the federal claims, and will make a motion to that effect upon permission to do so.

Also, the stock brokers from HUTTON were deceiving not only the plaintiff at his injury, but were deceiving HUTTON in the main part. Thus, because the violations of the case were caused by the Universal City branch, and not the main company, the Petitioner waives all punitive damages that arose from case law in the first place, and were not Petitioner's idea in the first place.

In regards to violating the Petitioner's right to trial by jury as demanded by the Petitioner, for all claims except

for arbitration of pendent state claims if allowed,

The Supreme Court said, in Gasoline Products Co. v. Champin Co. 283 US. S a6 498, 51 S.CT. (1931),

> "All of vital significance in trial by jury is that issues of fact be submitted for determination with such instructions and guidance by the court as will afford opportunity for rules governing trials at common law."

If it is a penalty and to prevent discovery, then, the motion to dismiss with prejudice, then, the PETITIONER's motion to set aside the Memorandum of Decision and order, which was denied should be reversed, because the Respondents were preventing discovery instead

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of letting the Petitioner continue in accomplishing discovery, and it was an abuse of discretion, because it was arbitrary and discriminatory.

In Societe Internationale, Etc. v. Rogers, 78 Supreme Court 1087, page 1094,

> "The provisions of rule 37 which are here involved must be read in light of the provisions of the Fifth Amendment that no person shall be deprived without due process of law, and more particularly against the opinions of this Court in Hovey v. Elliot, 167 U.S. 409, 17 S. CT. 841, 42 L.ED. 215, and Hammon Packing Co. v. State of Arkansas, 212 US. S 322, 29 S. CT, 370, 53, L.Ed. 530." These decisions establish that there are constitutional limitations upon the

power of courts, even in aid of their own processes, to dismiss an action without affording

"a party the opportunity for hearing on the merits of his case. The authors of rule 37 were well aware of these constitutional considerations. See notes of advisory committee oin rules, rule 37, 28 U.S.C. 91952 ed) p. 4325."

"In Hammond Packing Co. v. State of Arkansas S. CT. 370,

"...All the State required 'was a bona fide effort to comply with an order..., and therefore a reasonable showing of an inability would have satisfied the requirments... of the order page 347."

Thus, the Petitioner, (Plaintiff-Appellant) worked as fast as he could

being at the start he did know any security law until he found court of appeals case law, and did not know accounting which held back from early discovery of the concealed and therefore, intentional frauds in accounting and other deceptions, to the detriment of the Petitioner, which proximately caused Petitioner's harm.

No hearing on the evidence was ever had and the merits were never heard.

In Patapoff v. Johns Manville Sales Corp. 267 F 2d 863 (9th Cir. 1959)

> "... Rule 60 (b) is clearly designed to permit a desirable objective: that cases may be decided on their merits."

This case should be reversed on its merits, because of the applicable case law here cited, and the facts that follow.

Thus, by rule 60 the memorandum of decision of the United States District Court Judge PAMELA ANN RYMER was void for want of jurisdiction, because her decision was for a penalty only, and violated the 5th, 14th and 7th amendments to the United States Constitution.

The following case law shows the Plaintiff-Appellant had a meritorious case.

Kafton, et al v. Baptists Park Nursing Center, Inc. United States District Court, District of Arizona, No. CIV 78-968 CLH June 28, 1985

> "Exchange Act-Anti-fraud-Causation. - Loss causation does not have to be established between each misrepresentation or omission and the injury when an investor has alleged a scheeme to defraud since

the injury would stem from all interacting elements of the scheme and not solely from a particular misstatement or omission. The crucial nexus would be between the entire functioning scheme and the injury rather than between particular misrepresentation and the loss."

"Bond counsel defendants requested the Court's findings of disputed fact and or conclusions of law in support of its April 14, 1985 denial of bond counsel's motion for partial summary judgment on the issue of the tax-exempt nature of the 1976 Nursing Center bonds. Bond counsel raised two arguments in their memorandum; judicial estoppel and failure to show loss causation.

However, their request for findings and conclusions is directed only to bond counsel's contention that plaintiff has not "shown loss causation, that is, that plaintiff has failed to establish that her injury was caused by any misrepresentation regarding the tax-exempt nature of the bonds."

"The findings of disputed fact are whether defendants fraudulently induced the plaintiff class to purchase the bonds and whether the misrepresentations or omissions were material."

"When a Rule 10b-5 action is brought for material misrepresentation or omissions the plaintiff must prove two types of causations: (1) transaction causation,

where the alleged misrepresentations or omissions caused the pecuniary injury suffered by the plaintiff. Hatrock v. Edward D. Jones & Co. 750 F2d 767, 773 (9th Cir. 1984).

"Both types of causation are not required in every Rule 10b-5 case. A plaintiff "should not have to prove loss causation where the evil is not the price the investor paid for the security, but the broker's fraudulent inducement of the investor to purchase the security." Id.

Continuing page 92, 231,

"Transaction causation requires a plaintiff in a misrepresentations or omissions case to show that he relied upon the misrepresentations

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